APPENDIX A

NEW YORK SUPREME COURT
COUNTY OF NEW YORK

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiffs

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendants.

AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE

JAMES H. RODGERS, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under the penalties for perjury as follows:

1. I am the attorney for plaintiff herein in the above captioned action. As such, I am fully familiar with the circumstances in this action.

2. I submit this Affirmation with exhibits in support of SHERIDAN's Order to Show Cause and request for emer-

gency relief pursuant to CPLR § 6311 and 6313 seeking an order compelling The Trustees of Columbia University of the City of New York (hereinafter "COLUMBIA") to release SHERIDAN's college transcript to Harvard University Graduate School of Business, and for such other and further relief as this Court may deem just and proper.

3. This matter is an action by plaintiff SHERIDAN for a declaratory judgment declaring that it is unlawful for COLUMBIA to withhold his transcript from graduate schools and directing COLUMBIA to release the transcript to Harvard University Graduate School of Business, and to recover as yet unspecified money damages for breach of contract and/or promise, fraud and for intentional infliction of emotional distress as a result of COLUMBIA withholding plaintiff's transcript for the past ten years after awarding him a degree. (See summons and complaint attached hereto as Exhibit A). The relief requested in this Order to Show Cause is a result of COLUMBIA's refusal on February 9, 2000 to release SHERIDAN's transcript. (See COLUMBIA's refusal attached hereto as Exhibit B).

4. On or about October 24, 1990, COLUMBIA awarded SHERIDAN a degree. (See unofficial copy of transcript attached hereto as Exhibit C) This degree was unconditional and with the degree came all honors, privileges and immunities as afforded under the laws of the State of New York.

5. Mr. Sheridan has a continuing balance owed to COLUMBIA in the amount of $22, 706.16 for student loans. SHERIDAN has not been declared in default by COLUMBIA of those loans and entered into a re-financing arrangement with COLUMBIA in December 1999 when he made a lump

sum payment of $1,600.00. (See COLUMBIA invoice attached hereto as Exhibit D).

6. Subsequent to the granting of the degree in 1990, COLUMBIA continued to press SHERIDAN for payment of said monies. SHERIDAN attempted to make payments whenever he could and at no time did he express any intention in defaulting on that obligation. Numerous times since 1990, COLUMBIA has refused to release SHERIDAN's transcripts to university graduate programs. As a result, SHERIDAN was unable to be eligible for any graduate programs in any field during that time. In 1996, SHERIDAN applied further relief as this court deems just and proper.

Dated: New York, New York
February 18, 2000

By /s/ JAMES H. RODGERS
JAMES H. RODGERS

APPENDIX B

COLUMBIA UNIVERSITY
STUDENT LOAN PROMISSORY NOTE

Columbia University in the City of New York
Student Loan Section
Office of the Bursar
210 Kent Hall
New York, New York 10027

I, SHERIDAN, CHRISTOPHER F., promise to pay to Columbia University in accordance with the terms of this Note the amount of

$ 3,000, which has been lent to me, plus interest and penalty charges as provided below, together with all attorney's fees (which shall be not less than 25% of the amount then due) and other costs necessary for the collection of any amount not paid when due.

I further understand and agree:

1. LOAN FUND. The loan represented by this Note was disbursed from the

GILBERT Fund. If disbursed from the Gilbert Fund, the loan is referred to as a "Gilbert Fund Loan."

2. INTEREST. Interest shall accrue from the beginning of the repayment period specified in paragraph 3 at the ANNUAL PERCENTAGE RATE OF NINE PERCENT (9%) on the unpaid balance, except that no interest shall accrue during any period described in paragraph 4.

3. PAYMENTS. The principal amount of this Note shall be repaid, with interest, in equal monthly installments during a repayment period beginning the first day of the sixth calendar month following the date I cease to be eligible for a deferment as provided in sections (a) or (b) of paragraph 4. In the event that I shall become entitled to a deferment as provided in paragraph 4 after the repayment period has begun, the repayment period shall resume on the date my entitlement to a deferment shall cease. Commencing one month following the beginning of the repayment period, principal payments shall be made in 120 equal monthly installments on the first day of each month, together with interest on the outstanding balance, except that if repayment in 120 installments would result in payments, including interest, of less than $30 per month, payments shall be at the rate of $30 per month, which shall include principal and interest.

4. DEFERMENT. Interest will not accrue, and installments need not be paid, (a) during periods in which I am enrolled at Columbia University (including for this purpose Barnard College and Teachers College) as a full-time student (or, if this is a Gilbert Fund Loan, as at least a half-time student), (b) during periods totaling no more than four years during which I am enrolled at an accredited institution of higher education other than Columbia University as a full-time student (or, if this is a Gilbert Fund Loan, as a least a half-time student), (c) during periods totaling no more than three years during which I am on full-time active duty in the United States Armed Forces, or (d) during periods totaling no more than three years during which I am in service as a Volunteer under the Peace Corps Act or VISTA Volunteer under Title I, Part A, of the Domestic Volunteer Service Act. For the purposes of the

preceding sentence, enrollment in a summer session at any institution shall not be included unless I am also enrolled in such institution in the immediately preceding spring session or the immediately following autumn session. Columbia University will determine on the basis of proof submitted by me whether or not I have met any of the requirements for deferment of payment enumerated in this paragraph.

5. PREPAYMENT. I may at any time without penalty prepay all or any part of the principal of this Note, plus the accrued interest thereon. If I repay more than the amount due in any month, the excess will be used to repay principal unless I designate it as an advance payment of the next installment.

6. DEFAULT. If I fail to make any scheduled payment under this Note by its due date, the entire unpaid indebtedness, including interest due and accrued, plus any applicable penalty charges, will at the option of Columbia University become immediately due and payable. If I fail to fulfill any of my obligations described in this Note, Columbia University may withhold any rights and privileges to which I may otherwise be entitled, including registration for study and receipt of diplomas and transcripts.

7. PENALTIES. If I fail to make any scheduled payment under this Note by its due date, I agree to pay a late charge of $1.00 for the first month or part of a month by which the payment is late and $2.00 for each month or part of a month thereafter.

8. CHANGE OF ADDRESS. I will notify the Student Loan Section at the address at the top of this Note each time my address changes. I authorize all individuals and agencies,

including schools that I have attended and will attend, and motor vehicle departments of all states in which I have received or will receive driver's licenses, to give Columbia University information about my address.

9. CANCELLATION. If I die or become permanently and totally disabled, this Note will be cancelled. Disability will be determined by Columbia University on the basis of such medical or other examinations as the University may prescribe.

10. CREDIT AGENCIES. I authorize Columbia University to request information about me from credit agencies, and to give credit agencies information about my receipt of the loan represented by this Note and about my repayment of that loan.

11. WAIVER. In consideration of the loan represented by this Note and the grace period and deferment privileges granted in this Note, I expressly waive, in all jurisdictions, the defense of the statute of limitations and all other defenses arising out of any lack of diligence by Columbia University in enforcing any of its rights under this Note.

I hereby acknowledge receipt of a completed copy of this Note.

/s/ Christopher F. Sheridan
Signature of Borrower

_____
Print name of Comaker

/s/ [ILLEGIBLE] Lane
Permanent Address

_____
Comaker's Signature

Remsenburg, NY 11460

_____
Comaker's Address

10/31, 19 89
Date Signed

_____

A Comaker is required if the borrower is neither a citizen nor a permanent resident of the United States. A Comaker's signature must be notarized below.

State of _____)
) ss.:
County of _____)

On this ___ day of _____ 19__ before me personally came

_____

who, being duly sworn, did depose and say that (s)he subscribed to the above instrument and acknowledged that (s)he executed the same for the purposes therein contained.

_____

Notary Public

APPENDIX C

COURT OF APPEALS
STATE OF NEW YORK

New York County Clerk's Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

JAMES H. RODGERS, ESQ.
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for Plaintiff-Appellant/Cross-Respondent
327 Central Park West, 16-D
New York, New York 10025
212-825-6900

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COURT OF APPEALS
STATE OF NEW YORK

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

SIRS:

PLEASE TAKE NOTICE that upon the annexed Affirmation of James H. Rodgers, Esq., dated November 8, 2002, the Decision and Order of the Appellate Division, First Department, entered on or about July 2, 2002, and served by regular mail with Notice of Entry on July 3, 2002, and the Decision and Order of the Appellate Division, First Department, entered on or about October 8, 2002, and served by regular mail with Notice of Entry on *October 17, 2002*, denying reargument or leave to appeal to the Court of Appeals, the Briefs and Record on Appeal filed herein and all prior proceedings herein, Plaintiff-Appellant/Cross-

Respondent CHRISTOPHER F. SHERIDAN will move this Court, at the Court of Appeals, Court of Appeals Hall, 20 Eagle Street, Albany, New York, on the *25th day of November, 2002*, for an order granting Plaintiff-Appellant/Cross-Respondent leave to appeal to the Court of Appeals pursuant to CPLR § 5602(a)(1) from the Order of the Appellate Division, First Department entered on July 2, 2002, which modified in part and otherwise affirmed the Order of the Supreme Court, New York County.

Dated: New York, New York
November 8, 2002

JAMES H. RODGERS, ESQ.

By /s/ JAMES H. RODGERS

JAMES H. RODGERS
Attorney *pro bono* for Plaintiff-Appellant/Cross-Respondent
CHRISTOPHER F. SHERIDAN
327 Central Park West #16-D
New York, New York 10025
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TO: Brian K. Bernstein, Esq.
TOBACK, HYMAN AND BERNSTEIN
Attorneys for Defendant-Respondent/Cross-Appellant
THE TRUSTEES OF COLUMBIA UNIVERSITY
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COURT OF APPEALS
STATE OF NEW YORK

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant

AFFIRMATION IN SUPPORT OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

JAMES H. RODGERS, ESQ., an attorney admitted to practice law before the Courts of the State of New York, affirms the following statements under the penalties of perjury:

I am the attorney *pro bono* for Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan (hereinafter "Plaintiff") in the above-captioned matter and submit this affirmation in support of Plaintiff's Motion for Leave to Appeal to the Court of Appeals on the following issues of law.

QUESTIONS PRESENTED

(1) Does Education Law, Article 5, § 226(9) and the 1810 Charter of Columbia University vest degree-holders with equal, unconditional, and irrevocable privileges and immunities?

(2) Is the certification of a degree-holder's degree, through the release of the official transcript, a privilege which all degree-holders are equally entitled to?

(3) Is the refusal of a university to release the transcript of a degree-holder who has been conferred a university degree pursuant to Education Law, Article 5, § 226(9) or pursuant to a legislatively enacted charter, a violation of the laws of the State of New York?

(4) Is the refusal of a university to release a degree-holder's transcript to graduate schools or any other entity, an unlawful revocation of the degree which violates the privileges and immunities entitlement contained in Education Law Article 5, § 226(9)?

(5) Is the refusal of a Columbia University to release the transcript of a degree-holder to graduate schools or any other entity, an unlawful revocation of the degree which violates the privileges and immunities entitlement contained in Sections VII and VIII of the 1810 Charter of Columbia University?

(6) Does the refusal of a chartered university to release the transcript of a degree-holder breach

the implied sacred contract between a chartered university and its graduates requiring the university to honor the provisions of its charter, specifically the privileges and immunities granted to the possessor of the degree?

PROCEDURAL HISTORY

Plaintiff moves for leave to appeal to the Court of Appeals from the Order of The Appellate Division, First Department, entered July 2, 2002 (attached as Exhibit "A" is a copy of the Order with Notice of Entry, dated July 3, 2002) which modified, in part, and otherwise affirmed the Orders of Justice Marilyn Shafer of the Supreme Court, New York County, which granted in part, Defendant-Respondent/Cross-Appellant's (hereinafter "Columbia") motion to

To Be Argued By:
James H. Rodgers

NEW YORK SUPREME COURT
APPELLATE DIVISION—FIRST DEPARTMENT

New York County Clerk's Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

BRIEF FOR PLAINTIFF-APPELLANT/ CROSS-RESPONDENT

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Cross-Respondent
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New York, New York 10025
212-825-6900

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PRELIMINARY STATEMENT

Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan ("Sheridan") appeals from the Order of Hon. Marilyn Shafer, Justice of the Supreme Court, dated January 1, 2001, dismissing Sheridan's causes of action in breach of contract, intentional infliction of emotional distress, and request for declaratory relief for an order that a University is prohibited from withholding the college transcripts of a *degree holder* (alumnus). (R8-9) Columbia cross-appeals the January 1, 2001 Order. The request for a declaratory judgment involves a case of first instance in the State of New York. In addition, Sheridan appeals from Hon. Marilyn Shafer's Order dated October 4, 2001 dismissing Sheridan's demand for punitive damages for his causes of action in fraud and negligent misrepresentation, causes of action which survived both Defendant-Respondent/Cross-Appellant's ("Columbia") CPLR § 3211 motion to dismiss and its subsequent motion for reargument. (R14-21) The appeals have been consolidated and perfected together with one brief and Joint Record.

QUESTIONS PRESENTED

I. Is the withholding of a *degree-holder's* transcripts by a university prohibited by the law of New York and in violation of public policy? (case of first instance)

Answer: The Court below dismissed Sheridan's request for a declaratory judgment, but the Court failed to declare the rights of the parties on this issue and failed to declare the law of the State of New York.

II. Is there an implied contract that exists between a university and a *degree-holder* that requires the university to honor the degree and its vested privileges including the release of transcripts? (case of first instance)

Answer: The Court dismissed Sheridan's implied contract claim holding that Sheridan failed to plead a contract entitling him to the release of his transcripts, but failed to declare the rights of the parties on this issue.

III. Did Sheridan sufficiently plead his causes of action for declaratory relief, implied contract, express contract (1996 agreement) and intentional infliction of emotional distress?

Answer: The Court held that Sheridan did not plead a cause of action in contract entitling him to the release of the transcripts, that his alleged intentional infliction of emotional distress did not meet the standard necessary to sustain such an action, and dismissed his request for a declaratory judgment without declaring what the law is in the State of New York and without declaring the rights of the parties.

IV. Are Sheridan's claims for fraud and negligent misrepresentation sufficient to sustain a claim for punitive damages?

Answer: The Court, on reargument by Columbia, held that Sheridan's allegations of fraud and negligent misrepresentation did not reach the necessary threshold for punitive damages.

FACTS

Sheridan graduated from Columbia University and was conferred a B.A. degree in History in 1990. (R68) Sheridan financed his education entirely on his own by way of student loans and money he earned during the summer months. Throughout his academic career at Columbia he obtained state and federal loans which were administered by Columbia's

To Be Argued By:
JAMES H. RODGERS

NEW YORK SUPREME COURT
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Plaintiff-Appellant/Cross-Respondent,

—against—

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IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

REPLY BRIEF FOR PLAINTIFF-APPELLANT/ CROSS-RESPONDENT

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Samuel W. Horowitz, Inc. v. *Selkin*, 271 N. Y.S. 576 (1st Dept 1934) 24

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NEW YORK SUPREME COURT
APPELLATE DIVISION, FIRST DEPARTMENT

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

NOTICE OF MOTION FOR REARGUMENT OR IN ALTERNATIVE FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

S I R S :

PLEASE TAKE NOTICE that upon the annexed Affirmation of James H. Rodgers, Esq., dated July 25, 2002, attorneys for Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan will move this Court at the Appellate Division Courthouse, 27 Madison Avenue, New York, New York, on August 12, 2002 at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order permitting reargument, or, in the alternative, granting leave to appeal to the Court of Appeals, pursuant to Sections 600.14(a) and 600.14(b)

of the Rules of Court, First Department, and pursuant to CPLR § 5602(a) and § 5713, upon the questions of law set forth in the supporting Affirmation, from the Order of this Court entered on July 2, 2002, which modified and affirmed the Orders of the Supreme Court, New York County (Marilyn Shafer, J.) entered on January 1, 2001 and October 16, 2001, dismissing Plaintiff-Appellant/Cross-Respondent's Amended Complaint, and for such other and further relief as the Court deems just and proper.

PLEASE FURTHER TAKE NOTICE that pursuant to CPLR § 2214(b), any answering papers must be served seven (7) days before the return date of this motion.

Dated: New York, New York
July 25, 2002

JAMES H. RODGERS, ESQ.

By /s/ JAMES H. RODGERS

JAMES H. RODGERS
Attorney for Plaintiff-Appellant/
Cross-Respondent
CHRISTOPHER F. SHERIDAN
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TO: CLERK, SUPREME COURT
APPELLATE DIVISION, FIRST DEPARTMENT
27 Madison Avenue
New York, New York 10010

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NEW YORK SUPREME COURT
APPELLATE DIVISION, FIRST DEPARTMENT

Index No. 00103062/00

CHRISTOPHER F. SHERIDAN,

Plaintiff-Appellant/Cross-Respondent,

—against—

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Defendant-Respondent/Cross-Appellant.

AFFIRMATION IN SUPPORT OF MOTION FOR REARGUMENT OR ALTERNATIVELY FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

JAMES H. RODGERS, ESQ., an attorney admitted to practice law before the Courts of the State of New York, affirms the following statements under the penalties of perjury:

1. I am the attorney for Plaintiff-Appellant/Cross-Respondent Christopher F. Sheridan (hereinafter "Plaintiff") in the above-captioned matter. I submit this affirmation in support of Plaintiff's motion for reargument, or in the alternative for leave to appeal to the Court of Appeals from the Order of this Court, entered July 2, 2002

(attached as Exhibit "A" is a copy of the Order with Notice of Entry, dated July 3, 2002) which modified and affirmed the Orders of Justice Marilyn Shafer of the Supreme Court, New York County, which granted, Defendant-Respondent/ Cross-Appellant's motion to dismiss Plaintiff's Amended Complaint. I am fully familiar with the facts and circumstances surrounding the underlying action and the appeal.

2. Plaintiff graduated from Columbia University and was conferred a degree in 1990. Since 1990, Defendant-Respondent/Cross-Appellant Columbia University ("Columbia") has refused to release Plaintiff's transcripts to graduate schools until he satisfies *in full* alleged financial obligations to Columbia. Plaintiff is currently serving on active duty in the United States Army. This Court modified, in part, and affirmed the below Court's prior Orders dismissing Plaintiff's Amended Complaint in its entirety, including Plaintiff's request for a declaratory judgment declaring that Columbia is prohibited from withholding a *degree-holder's* transcripts. This Court's Decision and Order, entered July 2, 2002, is a final determination.

3. Plaintiff by this application seeks reargument of the Decision and Order of the Supreme Court, Appellate Division, First Department relating to the declaratory judgment, on the following grounds:

a. The controlling case law, as cited by this Court in its Decision and Order of July 2, 2002, only permits a college or university to withhold transcripts of students or non-degree-holders and this Court's Decision and Order specifically extends the current law to add a new category of persons, *degree-holders*, not previously included within the parameters of prevailing controlling case law cited by this

Court. (See *Grey*, *infra*, *Martin*, *infra* and *Spas*, *infra*.) Plaintiff respectfully submits that this Court's Decision and Order, creating a new legal precedent, cites no case law in support of extending the current controlling case law which clearly only applies to students and those who have not been conferred a degree. Moreover, this Court's Decision extends for the first time the general rule of law found in *O'Sullivan*, *infra*, which only permits a university discretionary power over a student up to the time of graduation. It is respectfully submitted that the Court's extension of a university's power to include withholding transcripts of degree-holders was an error of law.

b. Plaintiff cited statutory law, the *1810 Charter* of Columbia University and Education Law § 226(9), that clearly supports the position that the controlling case law as to students cannot be extended to degree-holders who are entitled to privileges and immunities not similarly possessed by students or non-degree-holders. Thus, this Court's extension of the controlling case law to include degree-holders is in direct contravention to statutory law which protects degree-holders from *any* action by a university that would diminish a degree-holder's privileges. It is respectfully submitted that this Court's failure to distinguish degree-holders' rights from those of students was an error of law.

c. This Court's finding that the refusal to forward Plaintiff's transcripts does not revoke his degree in violation of Education Law 226(9) and the *1810 Charter* because the challenged policy is expedient

for carrying out the designs of the institution, is in direct contravention to the controlling law of New York governing charter interpretation as clearly set forth in *Child* v. *Hudson's Bay Company*, *infra*; *People* v. *Utica Ins. Co.*, *infra*; *Beatty* v. *Marine Ins. Co.*, *infra* and *People* v. *Manhattan Company*, *infra*, which cases hold that a chartered organization cannot enact by-laws, ordinances, regulations or "policies" that are inconsistent with the provisions of its charter. In addition, the very charter provision that this Court relied on, Section IX, specifically prohibits Columbia from enacting by-laws or ordinances inconsistent with the laws of New York. It is respectfully submitted that this Court's sanctioning of Columbia's transcript withholding policy as it relates to degree-holders, which violates the provisions of Columbia's *1810 Charter*, was an error of law.

d. This Court's Decision and Order agreed with Plaintiff that Columbia's policy compromises Plaintiff's applications to graduate schools, yet further held that this does not "revoke" Columbia's certification that Plaintiff possesses the knowledge and skills presented by the degree. Plaintiff respectfully submits that this finding is inconsistent since if this Court agrees that Plaintiff cannot obtain a benefit of his degree, certification of his degree to graduate schools, then this Court must conclude, as a matter of law, that Plaintiff does not enjoy the same privileges as those with similar degrees whose transcripts are released. Thus, Columbia has revoked Plaintiff's privileges (and

degree) and Columbia remains in violation of its *1810 Charter*, since, if Columbia does not release Plaintiff's transcripts, there is no certification. Plaintiff respectfully submits that this Court's refusal to declare that the withholding of Plaintiff's transcripts revoked his degree, was an error of law and the issue should be reconsidered.

4. Plaintiff submits that the foregoing issues merit reargument because if this Court has decided to set new precedent and extend university power over students, as first set forth in *People ex re O'Sullivan* v. *New York Law School*, 68 Hun. 118, 52